IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

(Attorney Docket No. 2382)

In the Application of:	)	
	)	
Balaji S. Thenthiruperai	)	
	)	**Examiner: Frantz B. Jean**
Serial No.: 10/691,273	)	
	)	**Art Unit: 2154**
Filed: October 22, 2003	)	
	)	**Confirmation No. 4931**
For: Method and System for Managing Abnormal Disconnects During a Streaming Media Session	)	

REPLY BRIEF

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Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF

Dear Sir:

This Reply Brief is submitted pursuant 37 C.F.R. § 41.41, within two months from the August 5, 2008 mailing date of the Examiner's Answer. Applicants generally authorize the Office to charge any underpayment or credit any overpayment to Deposit Account No. 210765, and to treat any communication in this matter that requires an extension of time as incorporating a request for such an extension.

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I. Introduction

The Examiner's Answer, mailed August 5, 2008, has failed to rebut the points of clear error identified in Applicant's Appeal Brief, and has also failed to establish *prima facie* obviousness of the claims. In the Answer, the Examiner appears to have copied the text of the final office action. Following that text, the Examiner then set forth, on pages 11-12, a "Response to Argument" section, in which the Examiner commented on some of Applicant's arguments. This Reply Brief addresses these comments made in the Examiner's Answer.

II. Argument

The Examiner has erred in rejecting independent claims 1, 17, and 27. The combination of references that the Examiner used to reject these claims do not contain all of the claimed matter. Furthermore, the Examiner has not articulated any reasoning for how the claimed matter would reasonably or logically follow from the references as combined.

In the Appeal Brief, Applicant has set forth arguments overcoming the Examiner's rejections. It appears that the Examiner is maintaining these rejections. In the following sections, Applicant will rebut the Examiner's comments.

A. Cohn Does Not Teach Streaming Multimedia

In the "Response to Argument" section, the Examiner contended that the Cohn reference teaches streaming multimedia. Applicant submits that the Examiner has erred.

The Examiner asserted that paragraphs 0026 and 0055 of Cohn teach multimedia streaming. But, as Applicant explained in Applicant's Appeal Brief, in Applicant's Response to the Office Action mailed November 27, 2007, and in Applicant's Response to the Office Action mailed June 14, 2007, Cohn is directed to *downloading* a file to the client. In particular, paragraph 0026 of states, "*[t]he present invention is directed to devices that store content locally and allow playback when not connected to a service provider.*" (Emphasis added.) Likewise,

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Cohn again fails to teach applying the invention of Applicant's claims with respect to streaming media to a wireless device at paragraph 0055, using substantially the same wording as the above quoted section of paragraph 0026.

On page 6 of the Appeal Brief, Applicants generally described the well understood meaning of streaming as "transmitting a media stream from a server to a client with the client playing out the media as it is streamed, and potentially discarding portions of the stream already played out." Applicant also cited to lines 11-15 on page 3 of Applicant's Specification for support of this general definition.

However the Examiner cited page 681 of Newton's Telecom Dictionary, 14th Edition as stating that "Bill Gates of Microsoft defines streaming media as video coming to you in packets over the Internet." (Here, Applicant quotes the Examiner. It is not clear whether the Examiner is quoting or paraphrasing Newton's Telecom Dictionary.) The Examiner used this overly-broad definition to argue that Cohn teaches multimedia streaming.

Applicant submits that the Examiner erred in two ways. First, the Examiner used a definition of streaming that is contrary to how streaming is defined Applicant's Specification. "[C]laims must be read in view of the specification, of which they are a part." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (internal quotation omitted). Thus, the Examiner should have applied the definition of streaming in Applicant's Specification when reviewing the claims.

Second, the Examiner improperly introduced extrinsic evidence after the Appeal Brief was filed. If Applicant was permitted to introduce new evidence at this point, Applicant would cite to a later edition of Newton's Telecom Dictionary (published prior to the present application's date of filing). This later edition defines "streaming media" in a fashion that comports with how the term is defined in Applicant's specification.

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For these reasons, Applicant maintains that Cohn does not teach streaming media as recited by Applicant's claims.

B. Grob Teaches a BSC and PDSN, but Grob Does Not Teach a BSC or PDSN Performing the Claimed Invention

Independent claims 1 and 17 recite the elements of a BSC or PDSN detecting the termination of a wireless connection and notifying a server of this termination. In rejecting thee claims, the Examiner cited to the BSC and PDSN elements disclosed in Grob. However, Grob in Fig. 6 - Fig. 8 presents architectural diagrams of portions of wireless networks, some of which contain a BSC and/or a PDSN. Grob, at Col. 10, line 41 to col. 11, line 50, describes the components of Fig 6. - Fig. 8. Grob, at Col. 21, line 10 to col. 22, line 28, describes the operation of Mobile IP in a PDSN, as well as operations related to CDMA dormancy. In none of these sections does Grob teach a BSC or PDSN detecting the termination of a wireless connection and notifying a server of this termination.

In the "Response to Argument" section, the Examiner stated, "Applicants also argued that Grob is deficient of BSC and PDSN." Applicant did not make such an assertion. On page 7 of the Appeal Brief, Applicant stated that *Cohn* fails to teach a BSC or a PDSN. On page 8 of the Appeal Brief, Applicant then argued that, while Grob discusses a BSC and a PDSN in general terms, Grob does not teach the aforementioned elements of claims 1 and 17.

Since Cohn does not teach a BSC or PDSN, and Grob does not teach a BSC or PDSN performing the invention as recited in claims 1 and 17, the Examiner's "Response to Argument" is in error for at least these reasons.

C. Cohn Does Not Teach Receiving Logic from a Server

Applicant's claim 27 contains the element of "receiving logic from the server." As Applicant explained in the Appeal Brief, Applicant's specification at page 18, lines 10-15,

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describes receiving logic from a server, wherein the logic is executable. However, in the "Response to Argument" the Examiner contended that "[l]ogic can be interpreted to be anything." The Examiner further contended that Cohn's block retransmission enabling (BRE), which is means for keeping track of a most recently received block number in a file that is being transmitted, is logic. The Examiner then used this overly-broad interpretation of "logic" to conclude that Cohn teaches the claim element.

As noted above, "claims must be read in view of the specification, of which they are a part." *Phillips*, 415 F.3d at 1315. Thus, the cited section of Applicant's Specification should be considered when interpreting the scope of the term "logic." Applicant submits that the claimed matter refers to executable logic. Therefore, since Cohn does not teach the element that executes the BRE receiving executable logic, Cohn does not teach the claim element, and the Examiner has erred when stating that Cohn teaches this element of claim 27.

D. The Examiner has not Established a *Prima Facie* case of Obviousness of Applicant's Claims

In the "Response to Arguments" the Examiner appeared to contend that Cohn, in combination with Grob's definitions of the advantages of using a BSC and a PDSN, rendered Applicant's claims obvious. Applicant respectfully disagrees.

In order to establish a *prima facie* case of obviousness of a claim over a combination of references, an Examiner must articulate reasoning with some rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). An obviousness analysis should be explicit. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). *See also* M.P.E.P. § 2142. In this case, however, the Examiner's articulated reasoning for why the combination of Cohn and Grob would ultimately render the claimed invention obvious lacks factual support. In particular, the references do not teach what the Examiner relied

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on them to teach. Furthermore, the Examiner has failed to point to any objectively sound evidence that would have led one of ordinary skill in the art to modify the these references so as to achieve the claimed invention. Therefore, under M.P.E.P. § 2142, the Examiner has failed to establish *prima facie* obviousness of claims 1, 17, and 27.

III. Conclusion

Applicant submits that the rejections of independent claims 1, 17 and 27 are in error as a matter of law, for at least the reasons discussed above. Applicant further submits that these claims are allowable, and that dependent claims 2-16 and 18-25 are also allowable for at least the reason that they depend from an allowable claim. Applicant therefore respectfully requests reversal of the rejections and allowance of the claims.

Respectfully submitted,

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Date: October 3, 2008

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